



## BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

### COMMENTS AND RECOMMENDATIONS OF THE MINNESOTA DEPARTMENT OF COMMERCE ENERGY FACILITY PERMITTING STAFF

DOCKET No. IP 6605/WS-06-1445

Meeting Date: April 26, 2007 ..... Agenda Item # \_\_\_\_7\_\_\_\_

Company: Kenyon Wind, LLC

Docket No. **PUC Docket Number: IP 6605/WS-06-1445**

#### **In the Matter of the Application of Kenyon Wind, LLC, for a Large Wind Energy Conversion System Site Permit for a 18.9 Megawatt Wind Farm in Goodhue County**

Issue(s): 1) Should the Commission order a contested case hearing based on the request  
submitted by Citizens For Environmental Rights and Safety (CFERS), LLC?

DOC Staff: Adam Sokolski.....651-296-2096  
Deb Pile.....651-297-2375

#### **Relevant Documents**

Kenyon Wind, LLC, LWECS Site Permit Application	December 15, 2006
Kenyon Wind, LLC, Amended LWECS Application	January 25, 2007
Comments of Mike Chase	February 12, 2007
Draft Site Permit	February 21, 2007
CFERS, LLC, Request for Contested Case Hearing	April 11, 2007
Kenyon Wind, LLC, Comments	April 11, 2007
Kenyon Wind, LLC, Reply to Contested Case Hearing Request	April 25, 2007

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The enclosed materials are Comments and Recommendations of the Department of Commerce Energy Facility Permitting Staff. They are intended for use by the Public Utilities Commission and are based on information already in the record unless otherwise noted.

(Footnote: see eDockets (06-1445) or the PUC Facilities Permitting website for additional documents <http://energyfacilities.puc.state.mn.us/Docket.html?Id=18946>)

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## **Statement of the Issue**

Should the Commission order a contested case hearing based on the request by CFERS, LLC?

## **Introduction and Background**

Kenyon Wind, LLC, filed a site permit application with the Commission on December 15, 2006, to construct and operate the proposed 18.9 megawatt (MW) project. The Commission accepted the Application as complete at its agenda meeting on January 11, 2007, and issued its Order on January 17, 2007. On January 25, 2007, the Applicant filed an Amended Application reflecting changes to the Project's site boundary and proposed wind turbine layout.

### ***The Applicant and the Project***

Kenyon Wind, LLC, (Applicant) is a Minnesota-based Limited Liability Company. Kenyon Wind does not own nor have financial interests in any other Large Wind Energy Conversion System (LWECS) projects in Minnesota. The Applicant is coordinating development, equity financing, and management of the project with Edison Mission Energy, Inc., a California based, wholly owned subsidiary of Southern California Edison.

The Kenyon Wind project is a Community Based Energy Development (CBED) project. Ownership of the Kenyon Wind project will be shared among the 9 Limited Liability Companies which comprise Kenyon Wind, LLC, and Edison and/or its affiliates. The Commission has reviewed and approved the Kenyon Wind power purchase agreement (PPA) with Xcel Energy in docket E-002/M-06-1196.

### ***Preliminary Determination and Approval of the Proposed Draft Site Permit***

The Commission made a preliminary determination to issue a permit, issued a draft site permit, and initiated the public participation process for this project at its February 15, 2007, agenda meeting. At the meeting, Mr. Mike Chase, a resident near the proposed Project and president of CFERS, argued against making a preliminary determination and issuing draft site permit. The Commission's Order was issued on February 21, 2007.

### ***Public Participation Process***

At the request of the Goodhue County Board of Commissioners, DOC EFP staff presented information about PUC's wind permitting process at a public meeting in Kenyon on February 15, 2007. DOC EFP staff met on the same day with numerous county and township officials to discuss wind permitting issues, impacts, mitigation measures, and wind project development process. These two additional public meetings included a total attendance of more than 150 people.

The DOC EFP staff hosted a public information meeting on March 20, 2007, at the Kenyon-Wannamingo High School Auditorium pursuant to Minnesota Rule 4401.0550. Sixty-four persons signed in on the attendance list. Approximately 18 people signed up to ask questions or make comments. Verbal comments were split approximately 50 percent in favor of the project and 50 percent in opposition to the Project.

A public comment period on the draft site permit remained open until April 11, 2007. Six written comments in support of the Kenyon Wind Project were received. Mr. Chase, president of CFERS, LLC, provide written comments, received on February 12, 2007, which raised questions or concerns about the Project.

The CFERS request for a contested case hearing was received on April 11, 2007.

### **Regulatory Process and Procedures**

Any person may request in writing that a contested case hearing be held on an application for a site permit for a proposed LWECS project. The request must be filed within the time established for public comments on the draft site permit. The request must include the issues to be addressed in the hearing and the reasons a contested case hearing is required to resolve those issues. Minnesota Rule 4401.0550, Subp. 5 (A).

Following a request for a contested case hearing the Commission shall order a contested case hearing if it finds that the person requesting the contested case hearing has raised a material issue of fact and that holding a hearing would aid the Commission in making a final determination on the permit application. Minnesota Rule 4401.0550, Subp. 5 (B).

For a contested case hearing, the Commission shall identify the issues to be resolved and limit the scope and conduct of the hearing according to applicable law, due process, and fundamental fairness. Alternatively, the Commission may request the administrative law judge to identify the issues and determine the appropriate scope and conduct of the hearing according to applicable law, due process, and fundamental fairness. Minnesota Rule 4401.0550, Subp. 5 (D).

### ***Issues Requested to be Addressed***

In its request for a contested case hearing, CFERS, LLC, identified the following general issue areas with several specific concerns identified. CFERS states that each issue is a material issue of fact which should be addressed through a contested case hearing:

1. Demographics
2. Noise
3. Visual Impacts
4. Public Services and Infrastructure
5. Geologic and Groundwater Resources
6. Wildlife
7. Stray Voltage and Ground Currents
8. Status as a C-BED Project

## DOC EFP Staff Corrections to the Request

The CFERS, LLC, request makes three factual errors. DOC EFP staff respectfully takes this opportunity to correct the following errors.

1. Page 2 – CFERS, LLC, request quotes language incorrectly cited as Minnesota Rules 7030.0040. The language is actually a quotation from the “Shooting Range Protection Act,” which exclusively applies to an “area or facility designated or operated primarily for the use of firearms.” Minnesota Statute 87A.01 – 87A.08.

The applicable language from Minnesota Rule 7030.0040 states:

Subpart 1. **Scope.** These [noise] standards describe the limiting levels of sound established on the basis of present knowledge for the preservation of public health and welfare. These standards are consistent with speech, sleep, annoyance, and hearing conservation requirements for receivers within areas grouped according to land activities by the noise area classification (NAC) system established in part [7030.0050](#). However, these standards do not, by themselves, identify the limiting levels of impulsive noise needed for the preservation of public health and welfare. Noise standards in subpart 2 apply to all sources.

2. Page 3 – CFERS, LLC, indicates that the state noise standard applicable to the Kenyon Wind project is “55 dB(A).” A more accurate description is that the applicable noise standard is Minnesota Rule 7030.0040, Noise Area Classification 1, which is applicable for residential and farmstead land uses. Minnesota Rule 7030.0040:

### Subp. 2. **Noise standards.**

Noise Area Classification	Daytime		Nighttime	
	L <sub>50</sub>	L <sub>10</sub>	L <sub>50</sub>	L <sub>10</sub>
1	60	65	50	55
2	65	70	65	70
3	75	80	75	80

L10 and L50 are defined in Minnesota Rule 7030.0020:

#### **7030.0020 DEFINITIONS.**

Subp. 7. **L<sub>10</sub>.** “L<sub>10</sub>” means the sound level, expressed in dB(A), which is exceeded ten percent of the time for a one hour survey, as measured by test procedures approved by the commissioner.

Subp. 8. **L<sub>50</sub>.** “L<sub>50</sub>” means the sound level, expressed in dB(A), which is exceeded 50 percent of the time for a one hour survey, as measured by test procedures approved by the commissioner.

3. Page 3 – CFERS, LLC, provides a rather long and direct quotation represented as Findings 21 – 25 of the Findings of Fact of the Administrative Law Judge In the Matter of the Exemption Application by Minnesota Power for a 345/230 kV High Voltage Transmission Line Known as the Arrowhead Project, EQB Docket MP-HVTL-EA-1-99. The quotation is not found in the ALJ’s Findings of Fact, rather is a part of the ALJ’s Memorandum attached to the ALJ’s Findings of Fact and Conclusions. The EQB resolution of March 15, 2001, adopted the ALJ’s Findings of Fact, Conclusions and Order with amendments, but did not specifically adopt the ALJ’s Memorandum<sup>1</sup>.

### **DOC EFP Staff Analysis and Comments**

The CFERS, LLC, request appears to be written as comments on the Application. Comments on proposed wind energy projects are a normal part of the wind permitting and public participation process. Such comments do not require a contested case hearing. DOC EFP staff always considers public comments in development of recommendations to the PUC on a final permitting decision.

The CFERS, LLC, request was filed on time. DOC EFP staff analysis of the request finds that the request:

- 1) Does not appear to raise material issues of fact and fails to indicate why a contested case hearing is required.
- 2) The issues raised in the request are addressed in the Draft Site Permit or are outside the scope of this proceeding.

### ***Does Not Appear to Raise Material Issues of Fact and Fails to Indicate Why a Contested Case Hearing is Required***

The request identifies (see issues 1-8 above) potential or perceived impacts or mitigation measures, then states each is a “material issue of fact.” The request does not indicate why the issues raised are “material issues of fact.” In some cases, CFERS, LLC, suggests specific mitigation measures to alleviate the issue or concern raised. The request does not comment on, object to, suggest alternate conditions, nor state a position on the Commission’s Draft Site Permit issued on February 21, 2007, which identifies and addresses the relevant issues raised by CFERS, LLC.

The request fails to provide the Commission with reasons why a contested case hearing is required to resolve the issues raised in the request or how an evidentiary hearing would aid the PUC in making a final permitting decision. Minnesota Rule 4401.0550, Subp. 5 (A). CFERS, LLC, does not indicate that it wishes to call on specific experts to provide testimony or evidence which would inform the record. It is not apparent that holding a contested case hearing would resolve the issues raised in the CFERS, LLC, request.

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<sup>1</sup> ALJ Kenneth Nickolai. Several of the documents in this case are available on the PUC’s Energy Facilities web page at: <http://energyfacilities.puc.state.mn.us/Docket.html?Id=2673>

***Issues Raised are Addressed or are Outside the Scope of the Wind Permitting Process***

The issues raised by CFERS, LLC, and relevant to the siting process are already addressed by the Commission's Draft Site Permit. The Draft Site Permit for this Project contains conditions that are designed to minimize or reduce impacts associated with the construction and operation of the

proposed facility. The Draft Site Permit is consistent with previous site permits that have been issued by the EQB and the PUC, and has been subject to public review and comment on modifications for nearly two months.

Conditions in the Draft Site Permit require Kenyon Wind, LLC, to comply with all applicable township, county, state or federal statutes, rules, and permitting processes not superseded by the Commission's Site Permit. For example, aviation impact issues raised by CFERS, LLC, are addressed in the Draft Site Permit by requiring Kenyon Wind to comply with FAA aviation safety requirements. See Draft Site Permit Conditions E2, E4, and J3.

The PUC may take action to modify, suspend or revoke the Site Permit if the Project fails to comply with conditions, violates health and safety standards or applicable statutes and rules. Draft Site Permit, Section K, pages 16 – 17. However, specifics of these other state and federal statutes are outside the scope of this proceeding.

Issues raised that are not relevant to or outside the scope of this proceeding include, but are not limited to, whether the Minnesota Noise Standards found in Minnesota Rules 7030.0010 – 7030.0050 and enforced by the Minnesota Pollution Control Agency are adequate to protect public health or prevent annoyance; whether tax revenues generated by the Project will outweigh local governmental unit costs of emergency response and/or potential damage to roads; and, Kenyon Wind's status as an eligible entity under the Community Based Energy Development (C-BED) statute<sup>2</sup>.

**Commission Decision Options**

- A. Deny the request for a contested case hearing.
- B. Deny the request for a contested case hearing. Refer the CFERS, LLC, request to the DOC for incorporation as a public comment in the record used to develop its comments and recommendations on a final permitting decision.
- C. Grant the request for a contested case hearing. If the request is granted the Commission must determine the scope of the contested case proceeding or have an Administrative Law Judge from the Office of Administrative Hearings determine the scope of the proceeding.
- D. Make some other decision deemed more appropriate.

**DOC EFP Staff Recommendation.** Staff recommends option A or B.

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<sup>2</sup> The issue of C-BED eligibility was addressed in PUC Docket E002/M-06-1196, ITMO Northern States Power Company d/b/a Xcel Energy Request for Approval of Power Purchase Agreement with Kenyon Wind LLC (Kenyon). The PUC approved the PPA between Xcel and Kenyon Wind in its Order issued October 16, 2006. CFERS, LLC, nor its attorney intervened or commented in that docket.